

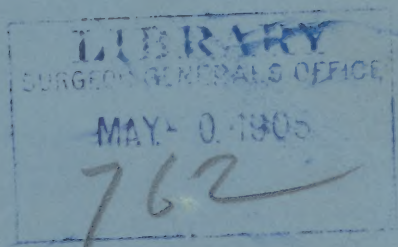
REEVE (J. C.)

The Referendum:

- I. HOW MUCH OF IT WE HAVE:
- II. DO WE WANT MORE OF IT?



J. C. REEVE, M. D., LL. D.



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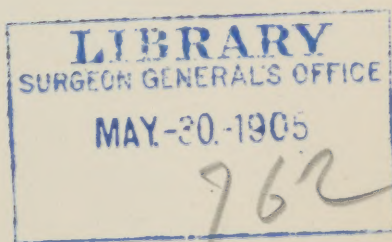
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A Paper read before the
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—BY—

J. C. REEVE, M. D., LL. D.



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The Referendum.

I had the honor of reading before you last winter a paper upon the Swiss republic. In that paper I presented for your consideration the peculiarities of a government which is the oldest and the purest democracy of the world. The democratic government of Switzerland has two especial features which render it distinctly different from the parliamentary democracy of England and the presidential democracy of the United States. These two features are the Initiative and the Referendum. By the former the people can compel legislative action, by the latter they can annul it. The Referendum is a veto in the hands of the people. I traced for you the rise and progress of this popular veto. Originating in open-air assemblages of the people for the transaction of public business, the landes-gemeinde, and still existing in this form in a few cantons, it has undergone modifications necessary from changed conditions. But the principles upon which it rests—that the sovereign power is with the people—has never been departed from, and the practice of the Referendum exists to-day in all of the twenty-two cantons. Established by the Federal Constitution of 1848, and extended by that of 1874, two instruments which did for Switzerland what the Constitution of 1787 did for our country, the Referendum was applied to the entire confederacy. It exists in two forms, the optional and the compulsory. The Referendum is compulsory in Switzerland as to all constitutional amendments. It may be exercised, or is optional, as to any statute law if called for by 30,000 voters within ninety days after the passage of the act. In that paper I called your attention to the extension of this institution in recent times as indication of its increasing popularity, and stated the fact, that after half a

century of trial, it was now firmly fixed in the hearts of the Swiss people, and that no respectable fraction of voters were dissatisfied with its action.

Permit me now to make a brief digression in order to present to you the latest exercise of this function in Switzerland. It was in regard to the purchase of the railroads by the government, the bill for which had been passed by the General Assembly, and at the time of reading my paper was awaiting the verdict of the Referendum. The measure had been already once defeated by the people on account of dissatisfaction with the terms. These had been modified and a price fixed upon—believed to be just—of \$180,000,000. The measure was carried by a vote of nearly two to one, and thus another government has entered upon the trial of a measure—the ownership and management of railroads—already in vogue in several countries, and which in our own is being agitated—denounced as revolutionary and impossible by some, warmly advocated by others.

It may be as well to give briefly the first fruits of this measure in Switzerland. It is a surprising reduction in the fares. For twelve dollars one can now travel first class anywhere in Switzerland, by rail or steamboat, during fifteen days. The roads are no longer run in the interest of stockholders, but for the benefit of the citizens, who are the owners, and for the promotion of the influx of tourists, who make the annual harvest of the country.

Two things have impelled me to a study of the Referendum in relation to this country and to the preparation of this paper:

First—The exceedingly brief manner in which the matter has been disposed of whenever brought up in conversation. That the Referendum was all well enough for a small country like Switzerland was conceded, but for one so large as ours it was impracticable. There has been no exception to this experience. Every member of this Club with whom I conversed thus curtly disposed of the subject.

Second—The total absence in the platforms of the Labor or Peoples' or National party of any recognition of the exercise of the Referendum in our government. A demand for the Referendum is always made, but never, so far as I have been able to

find, is its presence acknowledged or its extension asked for. Thus, the People's party in 1892, at Omaha, "commended to the favorable consideration of the people and of the reform press the legislative system known as the Referendum." This party carried four states, polled twenty-two votes in the Electoral College, with a popular vote of 1,122,045. The platforms of this party were similarly worded in the states of Wisconsin, Indiana, Minnesota, South Dakota, Michigan, Kansas and New Jersey, while the State Central Committee of the Republican party of Minnesota in 1892 appointed a committee to investigate the working of the Referendum in Switzerland.

These facts forced upon me the conviction that the extent to which the principle of the Referendum is recognized, and the extent to which it has been put in practice, right here in our midst are not generally known. Is it because the name is not used? Is it because we *submit* public measures to a popular vote and do not follow the Latin and speak of *referring* them to the people? The Referendum is "the submission of the laws, whether in the form of statute or constitution, to the voting citizens for their ratification or rejection." We have this principle applied in our own state over and over again, and it exists in other states. It will doubtless surprise those curt objectors to this mode of expression of the popular will, those who are so satisfied of the impracticability of the measure in our country, that "the constitution of every state of the Union, except Delaware, contains a greater or less recognition of this democratic principle." It will undoubtedly surprise them to learn the amount of experience we have had with it; that "in every state of the Union, in the county, the city, the township and the school district we employ, and in New England have employed, since the revolution, this popular political principle."*

The close of the revolution and the beginning of our independent life as States was a period of doubt, of difficulty, and of uncertainty. It is impossible for us now to appreciate the difficulties of that period. Popular government as yet was not. There was great distrust of the people; very great want of confidence in their ability to fashion schemes of self-government.

*Oberholzer: The Referendum in America. Philadelphia, 1893. I am indebted to this excellent work for a great many facts here presented, and not always, perhaps, acknowledged.

The master spirit in promoting republican measures was John Adams. After a struggle of a year, carried on, he tells us, "with anxiety, labor, study, argument and obloquy," he succeeded May 10, 1776, in carrying through Congress a resolution recommending to the states to form by representation such governments "as shall best conduce to the happiness and safety of their constituents in particular, and America in general. And if there should be any doubt as to the constitution formed, *it should be submitted to the people* in their several towns, counties or districts, that they make the acceptance of it their own act."* John Adams had faith in the people. As an instrument for the expression of its will, stood, in New England, the town meeting. Local self-government, direct legislation by the people, has been exercised in New England from the very earliest times, and its means has been the town meeting, an institution closely resembling, if not identical with, the "landesgemeinde" of Switzerland. By this meeting all local affairs, as roads, taxes, support of the poor, were regulated. With the high estimate placed by the early settlers upon the value of education, and the necessity of fitting every citizen for public duties, no subject was considered more important, to none was devoted more attention, than to the establishment and maintenance of schools. The length of time they were to continue, their various features, the amount of money to be expended for them, were subjects of ardent debate, and were determined only after careful consideration. It is in connection, then, with this subject that the people exercised the Referendum from the earliest times, and with this subject the farther extension and general application of the institution is closely connected. The close relation of our common school system with the practice of the Referendum cannot be overlooked. Maryland, as early as 1825, passed an act to establish a system of primary schools, and required the judges of election to demand of each elector, as he voted, whether he was in favor of such system or not, and to make due return of the votes; the act to be valid or void in any county, according to the vote. In Pennsylvania, in 1836, school districts were formed throughout the state, and the people of each district were empowered to

*Life and Works of John Adams, vol. III, pp. 19-28, from Oberholzer, p. 27.

decide by vote whether schools should be established or not. New York, in 1849, passed a free school law which became operative or not, dependent upon a vote of the people. So the Referendum appeared in other states very soon afterwards, and the practice of the Referendum has proceeded step by step with the advance of education.

In the formation of state constitutions, in accordance with the resolution of Congress just referred to, the Referendum became general first in two of the New England states, Massachusetts and New Hampshire. These were the only two states in which the new form of government was voted upon by the people. Connecticut and Rhode Island continued under their old charters, and in the other states the constitutions, framed by conventions, were not submitted to the people for ratification. It was in Massachusetts and New Hampshire that the town meeting was fully in vogue and stood ready at hand for the action of the people upon state measures. And it may aid us in appreciating the value and efficiency of this early feature of our government to look for a moment at the procedure followed in states where the town meeting did not exist. We have seen the clumsy method by which Maryland ascertained the will of the people as to schools. In Pennsylvania, in 1777, in order to ascertain the will of the people in regard to a convention for the formation of a new constitution, the Assembly provided for the election of commissioners, who should "go to the house or place of residence of each and every freeman entitled to vote for members of the assembly, or take some other opportunity of meeting them, and the said commissioner shall ask each and every freeman whether he desires that a convention be now called," etc., with directions for making return of the vote. It was fully forty years after this time before a popular vote came to be considered essential to the formation of the constitution of a state. Mississippi led off in 1817, Connecticut followed in 1818, Maine in 1819, Missouri and New York in 1820, Rhode Island in 1824, Virginia in 1829, Georgia in 1833, Tennessee in 1834, North Carolina and Michigan in 1835.* In Ohio the constitution of 1802 was not submitted to the people, but the Referendum was recognized as necessary for amendment. The

*Oberholzer.

proposition for a convention for this purpose could be submitted to the people whenever two-thirds of the General Assembly should deem it necessary. The present constitution was submitted to the people in 1851.

The principle of the Referendum in regard to state constitutions, then, seems generally well established throughout our country. Probably not more than two or three states could be found in which the people would tolerate a constitution not submitted to popular vote. Mississippi presents a notable recent example. The present constitution of that state, formed in 1890, was the work of a convention. It contains a strong educational qualification for suffrage, designed to keep the power in the hands of the whites. The negro population having a majority in the state, and therefore able to prevent its adoption, it was not submitted to vote. The question of the power of a convention thus to place in force a constitution was carried to the Supreme Court of the state, and the decision was that a constitutional convention may exercise sovereign power, provided only that the instrument it frames does not in any part conflict with the principles of a republican form of government. An able commentator says that this decision is "very little in harmony with the spirit of history and with present tendencies."* If this action of Mississippi be a step backward it is the result of our wretched measures of reconstruction after the Civil War.

The history of the mode of effecting amendments to state constitutions follows closely the same lines as the formation of the original instruments. In the earlier periods they were by convention, and by convention only; afterwards the conventions prepared the amendments, and they were submitted to the people. It is not necessary to detail all the modifications of the process. In four states a convention for revision of the constitution can be called by simple majority in one legislature; sixteen states require a two-thirds passage by one legislature; ten states require a majority of two successive legislatures; and Ohio, together with Florida, Kentucky, Maryland, Nebraska and North Carolina, demand a three-fifths passage by one legislature. In Rhode Island the measure must receive a majority

*Oberholzer.

of two successive legislatures and a three-fifths vote of the people. Many of the constitutions contain obligatory provisions for their own amendment. This feature appeared as early as 1792 in the constitution of New Hampshire, which is still in force. It provides that the people shall vote upon a convention for revision of the constitution every seven years. In Iowa the same measure is prescribed for every ten years, in Michigan every sixteen years. In Ohio the period is the same as in Maryland, New York and Virginia—every twenty years. The practice of the Referendum, then, in regard to amendments to the constitution is in practice in all the states of the Union except two, and in these it is indirectly exercised. In South Carolina constitutional amendments pass the legislature, then go to the people, and then return to the legislature for final action. In Delaware they must pass the assembly by two-thirds vote, not less than three months before the next election of representatives, they must be duly published, and then must receive a three-fourths vote of both houses of the next legislature.

The Referendum in connection with statute laws next demands consideration. Here, however, it is necessary to call attention to a momentous change which is taking place in our government. It is the inclusion in the Constitution of matters which were formerly entirely dealt with by legislation. Constitutions were formerly brief statements of the fundamental principles of the government; now they contain provisions directing or limiting legislative action upon subjects the most diverse in character and varying as to importance in the widest degree. This change, the result of a constantly increasing distrust of the legislature, is noted by almost every writer upon the subject. Sullivan says: "Among the plainest signs of the times in America is the popular distrust of legislatures."* Goldwin Smith** says: "It is not easy to say how far, with the spread of public education, this process may go. * * * If monarchy is primeval, parliaments are the offspring of the middle ages, and for them, too, the sand in the hour-glass of history runs." In Mr. Brice's work you will find this important change fully considered and its causes investigated. He gives among these a decline in the quality of state legislatures, the

*Direct Legislation. J. W. Sullivan: New York, 1893, p. 93.

**Quoted by Cree: Direct Legislation by the People. Chicago, 1892.

superior ability and greater sense of responsibility of constitutional conventions.* Mr. Lecky notes the change, and accounts for it by the invariable tendency of legislatures to fall into the hands of caucusses, wire-pullers and jobbers. He makes a plea, in this connection, for the introduction of the Referendum into England, and refers to the working of this measure in our country as one "which is transforming the whole character of state government." ** Increasing distrust of legislatures is plainly shown by the change from annual to biennial meetings. Over half the state legislatures now meet only biennially.

Let us glance rapidly at some of the subjects submitted to the people for decision :

1. Changes in the territory of states. In 1816 there was held an election in what was then the District of Maine, and in 1819 one was held in the State of Massachusetts to determine whether Maine should be a separate and independent state. In 1846 Congress called upon the people of the county of Alexandria to decide by vote whether certain territory ceded by Virginia to the United States should be ceded back to the state. This instance is notable as being a distinct resort to the Referendum by the Federal government.

2. The location of state capitals. This was formerly done by commission or by the legislature. Texas, in 1845, first put this subject into the hands of the people, California followed in 1850, and now the constitution of twelve states ordain the Referendum for the location of their capitals.

3. The location of county seats. This appeared in practice a long time ago, and now in twenty states the decision of this matter is with the people.

4. Forming new counties or changing the boundaries of old ones. In eighteen states, including Ohio, this is done by vote of the people.

5. The location of state institutions, as universities, insane asylums and penitentiaries. In all the newer states of the Union this is subject to the Referendum.

6. The expenditure of public money came very naturally to be a subject of grave consideration with the people. To listen to many writers and speakers of the People's party it would be

*Commonwealth, Chapter xxxix.

**Democracy and Liberty, I., p. 281.

believed that the people had no power to control or limit this; while in fact the constitutions of no less than twenty-one states have provisions upon this subject. Rhode Island was first in this matter. She was governed by royal charter until 1842, when the present constitution was formed. This provides that "the General Assembly shall have no power hereafter, without the express consent of the people, to incur state debts to an amount exceeding \$50,000 except in time of war or in case of insurrection or invasion." Michigan adopted a similar provision in 1843, New Jersey in 1844 and Iowa and New York in 1846. The limits of the amount of debt which may be incurred by the state without a vote of the people varies very widely, from \$50,000 up to \$1,000,000, the latter sum only in New York and Kansas. No city in Pennsylvania can contract debts beyond two per cent. of assessed value of taxable property without the Referendum. *

7. In a few states the people have a voice in fixing the rate of taxation. The constitution of Colorado, framed in 1876, contains provisions stating the number of mills per dollar of valuation, beyond which taxation shall not go without a vote of the tax-payers. Idaho and Montana submit the decision to all the voters of the state. In some other states the people may vote taxes for special purposes. In Ohio there are many provisions of this and similar kinds. The county commissioners cannot levy any tax for erecting public buildings, or for purchase of sites for them, or for building any bridge, the expense of which will be more than \$10,000, without submitting the proposition to a vote of the people. They may submit the question of establishing a children's home, of the purchase of the national road and its conversion into a free turnpike, and whether a tax not exceeding one-half mill on the dollar shall be levied for the erection of a monument to soldiers of the Civil War.

8. Changes in the qualifications for suffrage are made subject to the Referendum in several states. In Wisconsin, in 1848, suffrage was extended to negroes by popular vote, and in 1885 school suffrage was given to women. In Colorado and North and South Dakota no change can occur without a vote of the

*Direct Legislation. Sullivan, p. 84.

people. In the former state in 1877, and in the latter in 1891, the extension of suffrage to women was defeated.

9. The establishment of banks. Constitutional provisions requiring submission of this question to a vote of the people is the outcome of a popular feeling against moneyed corporations which at one time prevailed, and the intensity of which cannot be realized by those who did not witness it. This feeling had its origin in the losses sustained by the operation of "wild-cat" institutions. The constitution of Iowa of 1846 contains the first provision for the Referendum in regard to banks. Illinois and Wisconsin followed in 1848, Michigan in 1850, Ohio in 1851, and seven states now require it. Wisconsin provides for a double Referendum upon this subject, which marks at once distrust of the legislature, fear of moneyed corporations, and confidence in the people. In that state the legislature may submit the question of "banks" to a general election, which having been carried, it may frame a charter of a bank, and this charter must then be submitted to another vote of the people.

10. Regulation of the sale of alcoholic liquors. You are all too familiar with the operation of our own state law to need extended remarks. The Referendum upon this subject was exercised long before the passage of the celebrated Maine law. In 1846 Pennsylvania gave the voters of certain sections of the state the right to vote for or against the sale of liquors. In some states the amount of license is fixed by popular vote. Our local option law was passed in 1888. It confers on the people of the townships the right to vote on this subject not oftener than once in two years. Here, too, we have the "Initiative," for upon petition of one-fourth of the voters the trustees are required to submit the question to vote.

It is on this liquor question that the great battle of the establishment and extension of the Referendum in this country was fought. The evils of intemperance, the interference of prohibition with personal rights, the vast money interests involved, the passion and prejudice aroused, all conspired to make the conflict between the advocates and the opponents of these measures bitter and desperate. No other question connected with the Referendum has been so often the subject of

litigation, and the legal battle has been fought up to and through the highest courts of most of the states of the Union. It is with deep regret that I am obliged to deprive our legal friends here present of the exquisite pleasure they would experience from a detail of these decisions and counter-decisions, and reversals of judgment and of conflicting opinions and rulings and over-rulings. They would form a beautiful array. I know nothing approaching the jumble unless it be a first-class prescription of the middle ages! But then we are no longer in the middle ages. Briefly stated, the fight has been upon two propositions:

1. The people having elected representatives for the purpose of legislation, can they resume and exercise this delegated power?

2. Has a legislature the right to pass laws the operation of which depends upon a contingency?

These principles stand affirmed by the highest tribunals of twenty-five states, of which Ohio is one; they are denied by those of nine states, of which New York and Pennsylvania are the most important. It may be added that the Supreme Court of the United States has decided, although not in regard to the liquor question, that legislation subject to a future contingency is just and right.*

The examples of the practice of the Referendum which I have presented by no means exhaust the list. It would be impossible to detail all the measures which, in the different states, are referred to the people for decision, some of them even of trivial character. In Illinois, Texas, West Virginia and Kansas the people vote on cattle being permitted to run at large. In Kansas they voted on the question of osage orange hedges, one year of age, being a legal fence. In Georgia they vote "fence" or "no fence." Missouri gave to the voters of St. Louis the right to determine whether beer should be sold on Sunday. In our own state the people of the townships must vote upon the construction of bridges, vaults and cisterns; purchasing fire engines and hose; on borrowing money for certain purposes; on incurring expense for a public library; on

*Oberholzer, p. 129.

purchasing a hearse and building a vault for the dead, together with many other subjects.

Thus far nothing has been said of the Referendum in connection with the government of our cities. This because, unfortunately, there has been very little experience with it. The Referendum being of local origin, it would seem to follow that it would be naturally adopted in cities, where the conditions of compact population, daily papers, lectures, societies and clubs, all the activities of civic life, are conditions favorable to its exercise. Nowhere else has been shown how necessary is some check upon legislation. The misgovernment of our cities, the corruption and bribery of officials, the money-making schemes of individuals or corporations, the plunder of public moneys, the stealing from the people of valuable franchises, have made of the municipal government of this country a laughing stock and a by-word to other nations, and have pointed the shafts of scorn against our boasted self-government. You know all this disgraceful history. I need not dilate upon it. Cities have been, and are now, with a few exceptions, the creation and the creatures of state legislatures. Special charters have been drawn for them, granted and withdrawn, and amendments enacted, solely by the legislature. The people have not only not been consulted, but these instruments have often contained provisions to which they were well known to be hostile. We know this here in Dayton. Attempts have been made to remedy these evils. In 1875 Governor Tilden, of New York, and Governor Hartranft, of Pennsylvania, each appointed a commission to frame a system of civic government, but nothing was effected. A step in advance was made by constitutional provisions placing city government under general laws, and classifying the cities according to population. Twenty-three states, of which Ohio is one, now follow this plan. More recently, however, a more distinct advance has been made by the introduction of the Referendum, placing the formation of city charters in the hands of the citizens themselves. In the three states of Missouri, California and Washington the people of cities form their own government, and without attempting to detail all the steps of this advance, so important a feature cannot be passed over in

silence, bearing so strongly as it does upon one of the greatest evils of our country, and upon the future of the Referendum. This movement began with efforts to form a government for St. Louis in the convention which formed the state constitution of Missouri of 1875. Briefly, the provisions adopted are that thirteen freeholders, each for five years a voter in the city, shall be elected. This board shall draft a charter which within thirty days thereafter shall be voted upon by the people, and if this charter receives a vote of four-sevenths of the inhabitants it shall be the form of government of the city. The advantages resulting from this plan were so evident that California, in her constitution of 1879, gave to all cities of over 10,000 population the power to form their own charters; and the state of Washington, by her constitution of 1889, made the same provision for cities of over 20,000 inhabitants. And there is now soon to be tried another application of the Referendum to city government, the results of which cannot but be looked for with the deepest interest, especially since Greater New York has just entered upon a new epoch with a charter framed by the legislature. In May last the citizens of San Francisco adopted by a majority of 2,000 a charter which had been prepared by a commission of fifteen under the provisions of the state constitution. This charter provides that "upon the presentation of a petition bearing the names of a number of voters equal to fifteen per cent. of the vote cast at the last election, any ordinance set forth in the petition shall be submitted to the people. If a majority of the votes cast be in its favor it becomes valid, and cannot be repealed by the city legislative body. By this charter no street railroad, light or water franchise can be granted or renewed without ratification by a vote of the citizens. This charter is to take effect with the coming year if not vetoed by the legislature. California alone of the three states reserves the right of the legislature to veto the charters. In Missouri and Washington the legislature has no power to nullify the action of cities which have formed charters.

This is the greatest triumph yet achieved in civic government by the cause of direct legislation by the people. In the state of Missouri and on the Pacific slope is to be worked out,

we trust, the problem of the separation of our city governments from the state, to make them self-reliant and self-controlling bodies. But yet, in ten states of our Union cities are still at the mercy of the legislature.

I have by no means exhausted the list of examples of the exercise of the Referendum right among us. One other instance must be given, however, because it is not connected with our political government, and is an index of the extent to which the people are educated upon this matter. The various labor organizations of this country are making daily use of the Referendum. Eight years ago these bodies contained a membership of 200,000. All measures passed by the central governing bodies are referred to the separate unions, and are there voted upon by every individual member of these organizations.

Now, in view of the facts presented as to the actual exercise of the Referendum, how can we explain the absence of the recognition of this exercise by the Peoples party in its various platforms, and what becomes of the objection that the Referendum is impracticable in our country? The simple fact is, that the Referendum needs for its execution just the same, and no more, election machinery than we have now. The same proceedings which elect a constable would suffice for the Referendum. What greater difficulty would there be in voting directly for a United States senator than for a governor? And why could not each district elect its member of the electoral college as well as its member of Congress? And what harm would result if all important statute laws did not go into effect, as in Switzerland, until ninety days after their passage, during which time they were subject to a call for the Referendum? * But the object of this paper is not to devise methods, but to discuss the principle, and I pass to the second division of my subject.

DO WE WANT MORE OF THE REFERENDUM?

This question may be preceded by another: Are we satisfied with things as they are? If there is a man who believes that in

* Since this paper was read several of the north-western states have decided several important measures by the Referendum. In Washington female suffrage was defeated by an overwhelming majority; in South Dakota it failed by only a few votes. In Minnesota female school suffrage was established, and power given to cities to frame their own charters. In South Dakota the Referendum, and the Initiative also, were adopted subject to a call of five per cent. of the voters.—*The Outlook*, November 26, 1898.

the evolution of government we have reached a point beyond which it is not necessary or desirable to go; if he is entirely satisfied with the present state of affairs, then my words are not for him. Then

— He is satisfied with a system under which a President may be elected by a minority of one million of the popular vote;

— He is satisfied with the cumbrous machinery of an electoral college, which originated in manifest distrust of the people, and has never once in practice followed the theory upon which it was framed;

— He is satisfied with a system which permits the appointment of incompetent men to staff positions in the army as rewards for political services, and so he becomes accessory to the murder of our soldiers in the field;

— He is satisfied with a mode of election of members of the Senate which has led to corruption so flagrant, so shameless, as to be a national disgrace;

— He is satisfied with a system of federal legislation which consists mostly of party maneuvering until the closing hours of the session, when the most important measures are disposed of with a haste as injurious as it is indecent.

— He is satisfied that this legislation shall be by a body of men five per cent. of whom will accept bribes in money, and fifteen to twenty per cent. more are open to forms of corruption less palpable; *

— He is satisfied with state legislatures to which the lobby is attached as a permanent institution, openly recognized, and daily doing its work of corruption to promote corporate interests or private gains; legislative bodies where, if votes are not directly bought, they are bartered for, and measures for the promotion of private ends are carried through by a system of trading;

— He is satisfied with a system which has reduced states, bearing the proud name of "Keystone" and "Empire," to be the mere creatures of railroads that traverse them;

— He is satisfied with the existence of party, with its

*Brice, II, p. 132.

division of community into two hostile camps, the quadrennial contests between which unsettle for a time all the business of the country ; with its vilification of opponents ; its prostitution of official position to rewards for partisan services ; which exerts its baneful influence even upon our schools ; with its demands for allegiance to its behests which shall surpass even the loyalty the citizen owes to his country ;

— He is satisfied with the caucus which presents candidates for office by means so base that decent and honest citizens have been driven from participation in public affairs ;

— He is satisfied with the “ boss ” who fixes the caucus and directs its action.

— Then he is satisfied with all this political machinery which has transformed our government from a democracy intended to be as pure as that of Athens into an oligarchy as narrow as ever tyrannized over Venice.

But these, say the monarchists of Europe, are the legitimate fruits of a democratic form of government. They are not. They are the outcome of a democratic government administered by representatives. The difference between the two forms is radical. In the one, action is by the people, in the other by a set of delegates who, being elected, are no longer under the control of the people. We have no method by which the people can influence the action of the legislative bodies, except by petition, which is too weak to deserve consideration. It is here that the Referendum would be of service, and in proportion as it exists the government approaches a pure democracy. The Referendum is a veto in the hands of the people instead of in those of a president or a governor. The sovereign power is no longer exercised by representatives of the people, but by the people themselves.

Let us stop for a moment to inquire if a representative government represents. The House of the Fifty-third Congress contained of lawyers seventy per cent., while the census showed that lawyers were .37 of one per cent. of the population. Farmers and farm laborers made up forty-four per cent. of the population, and had one per cent. of this body of legislators. In this Congress bankers had one hundred times the representation

they were entitled to by the census. The same disproportionate representation is the rule in our state legislatures. The same is true abroad where government by representation obtains. In Parliament 450,000 railroad shareholders had twenty-two members, 380,000 railroad employes had not one. Landowners had 130, agricultural laborers had one. These are only given as specimens of the glaring injustice of this mode of government. Many other examples could be adduced did time permit.*

The question now for consideration is: Shall we have more of the Referendum? Shall we extend its operation, in its optional form, to a wider range of statute law, and to our municipal governments? In the affirmative of these questions I would present the following considerations:

1. The extension of the Referendum is in accord with the spirit of the age. One of the great features of the century now about closing, and which history must record, is the great democratic movement which has characterized it. This movement began with the passage of the Reform Bill in England in 1832; was continued by attempted revolution in Europe, which failed in Germany, was checked for a time in France by Louis Napoleon, but finally ended there in a quasi-republic. It was further continued by the settlement of Australia and New Zealand, and by the entrance of our western states into political life. In all of these the Anglo-Saxon race, devoted to freedom, trained in the practices of free government, active, enterprising and intelligent, has essayed, and is essaying, every modification of government which offers an escape from the evils of the past, or bids fair to solve social problems or promote the common weal. A constant feature of this great movement is the Referendum. It has been widely extended and thoroughly tested in Switzerland, and in that country by it, and by the initiative democracy, has proved a complete success. It has been warmly advocated, and partially tried, in Belgium, and it is a plank in all the socialistic platforms of Europe. Even in conservative England a movement is going on in its favor, and an institution of which we are told that the nature and the very name were unknown to English statesmen in 1890 is now a part of the programme of the great labor movement of that country. One

* *Bliss*: Encyc. of Social Reforms. *Art.*: Direct Legislation.

of its advocates there writes that "the time has come when we may import from the United States a feature which in the domain of politics is by far the most valuable result of American inventiveness." *

2. The Referendum enables the citizen to separate measures from men. The desirability of this is evident. At our next presidential election a voter may desire to cast his ballot for the present incumbent of the office, recognizing his sound judgment in holding back from war, and desiring to testify his admiration of the energy, the vigilance and the ardent patriotism with which he has prosecuted it. But if he votes in obedience to these feelings he is obliged to give his support to an excessively high tariff, which he believes to be a bad measure for the country. Or look at this from another point of view. The voter may be quite willing to sustain the policy of the administration, yet feels that he cannot cast his ballot for a man who, by a wholesale appointment to staff positions of the sons and nephews of political favorites, untrained for the positions they were to fill, has placed a foul blot upon his administration, caused untold suffering to our soldiers in the field, and imperiled the success of our armies.

3. The Referendum separates measures from measures. A voter ought certainly to be able to vote singly on important questions, yet it is now impossible. At our last presidential election an income tax and free silver were tied together. Look at the position of a man like John Sherman at the present time—a supporter of the war and of all the measures of the Republican party, except the annexation of all the earth. He has no means of making his vote tell against a great measure which he believes to be bad policy unless by going over to the other party. Again, an honest Democrat may gladly vote against imperialism, but then he must support free silver, which he believes would have a most pernicious influence upon the prosperity of the country.

4. The Referendum would bring back into political life that large body of citizens who have withdrawn from it, disgusted by the methods of politicians. † The great silent classes of the community would then make their power felt, as they cannot now

*Prof. Dicey: *Contemp. Review*, April, 1890. *Edinburg Review*, January, 1890. Lecky: *Democracy and Liberty*, I, p. 281.

†Lecky: *Democracy and Liberty*. Sullivan: *Direct Legislation*.

without befouling themselves with the mire of ward politics.

5. The Referendum would diminish party power, and would tend to moderate party organization, party feeling, and party action. We are told by political writers that government by party "is the normal necessary outcome of purely representative institutions," and that "there is no way to prevent representative institutions from taking that form." * If this be so, then all the evils resulting from party are inherent to our system, and a change is imperatively demanded. That a change in this respect would be effected by the Referendum is the opinion of every writer upon the subject. But here again the Referendum has passed far beyond the theoretical stage. We have but to turn to the experience of Switzerland, that country where democracy "has proved to be a complete success." † There government is carried on without those waves of excitement sweeping over community, without that slavish fealty to party leaders and organizations which characterize our country. How deplorable should some system be devised which would break up "rings" and take away the power of the "boss," the "heeler," and the "wire-puller!"

6. The Referendum would exert an educating and an elevating influence upon the voters. Under our present system the people, having elected their representatives, sink into political apathy. Indeed, it is useless for them to debate or to study measures. They have no means of promoting or preventing legislation until another election for men comes around. With the Referendum every citizen would feel his power over impending measures. He could exercise that power, and with this power comes an increasing sense of responsibility. It is needless to say that the people would not exercise the power. Interest is a great sharpener of wits and stimulus to action. But again, we can adduce positive testimony to sustain this point. It is a singular fact that in the only writer I have found who opposes the introduction of the Referendum into this country, ‡ there is direct testimony as to this effect of the institution. He is writing of Switzerland, and says: "The Referendum leads to public discussions, newspaper criticisms, addresses and counter-addresses." Curti has considered this

* *Cree*: Direct Legislation.

† *Edinburg Review*, January, 1890.

‡ *Nation*, September 13, 1894.

point in his study of the results of the Referendum in Switzerland. * He traces the increasing participation of the people by giving the increasing *percentage* of the voters as shown by the different federal Referendums since the adoption of the constitution of 1848. Beginning with only about forty per cent., this percentage has steadily increased to sixty, then to seventy, until finally, in the last one, on the purchase of the railroads, it reached eighty per cent. His testimony is explicit upon this point. He terms the Referendum "a political school for the people" and "a marked element of culture," and says that its value in this respect "cannot be over-estimated."

7. The Referendum will diminish corrupt legislation. This effect is self-evident, and how it would be accomplished needs no extended argument. Great corporations would cease to manipulate primaries and pack conventions. It would be useless for them to buy up legislatures and city councils if behind them the people stood with a veto. Members of legislative bodies may be purchased, but the majority of the people never.

8. The Referendum tends to check hasty and inconsiderate legislation, and prevents extreme measures. It may seem surprising that a measure so ultra-democratic in nature should be conservative in practice, but it has shown itself eminently so. Its exercise increases the sense of responsibility of the people, it gives time for reflection and examination, and it stands before the representative bodies as a constant check. This is the unvarying testimony of writers who have studied the subject. It is the irrefragable testimony of experience.† As an instance: In Switzerland a bill was drawn by the Assembly, and carried by a majority of two, under the influence of the Socialists, based on the proposition that every Swiss had a right to employment. The Referendum defeated this piece of class legislation by 308,000 votes to 75,000. Adams, in his work on the Swiss Republic, says that "the Referendum acts as a drag upon hasty and radical law-making." Cree says that by it "hasty and excessive legislation, and the passage of laws not in accord with popular opinion, are prevented." ‡ Laveleye, the Belgian writer, says "it has shown itself economical, adverse to centralization, to strong power, and to heavy outlays, and consequently

*Die Resultate des Schweizerischen Referendums; von Theodor Curti, Stuttgart, 1898.

†See Democracy in Switzerland; Edinburg Review, January, 1890.

Bliss: Encyc. Social Reforms. Art.: *Referendum*.

Dicey: Contemp. Review, April, 1890.

‡Direct Legislation by the People, page 79.

hostile to what is called Jacobin or radical policy." * Brice says that "the Referendum is rather a bit and bridle than a spur," and that "direct legislation by the citizens causes fewer evils than it prevents." † Curti, after seventeen years' personal observation of the Referendum in Switzerland, says that "it has hindered but little good that we would have done, but has hindered the doing of much evil by standing before us as a warning." ‡

If I am now, after a careful study of the subject, to answer my own question, "Do we want more of the Referendum?" my answer will be in the affirmative. We want more of it, and we want it right away. Not because this or any other single measure is going to prove a panacea for all our political ills, but because this measure is a means of direct legislation by the people. We have now the compulsory Referendum in regard to constitutional changes. We have it in its optional form in regard to many subjects of legislation. Let us have it extended in this form to every important measure affecting the public welfare. Let it be introduced step by step, as may be judged wise and judicious; every increase of its exercise being a step towards making of this government what it is now only approximately—a government of the people, by the people, and for the people. We want, above all, the Referendum for our city governments. We want our city charters made as they are in Mississippi, California and Washington. We want independent municipal government because we need it there, and it is in cities that the conditions are present for its most successful exercise. You may agree with me or not, gentlemen, as to the merits of the Referendum, but the question of its farther extension you will have to settle. It is one of the "present day" questions pressing for solution. Large political bodies are demanding it. Our labor organizations are practicing it and calling for it. Day by day the numbers of those increase who ask for this institution which makes the voice of the people the ultimate court of appeal, and by which, in the language of Mr. Lecky, "Democracy is crowned king." ††

*Quoted by Cree.

†Commonwealth I, pp. 455-457.

‡*Op. Cit.*

††Democracy and Liberty, I, p. 289.

